

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-019

BONNIE POZNANSKI,

Claimant-Respondent,

v.

PROVIDENCE HOSPITAL,

Self-Insured Employer-Petitioner.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 JUN 3 PM 11 18

Appeal from a January 14, 2015 Compensation Order by
Administrative Law Judge Amelia G. Govan
AHD No. 14-299, OWC No. 703452

Michael Kitzman for Claimant
Todd Sapero for Employer

Before, JEFFREY P. RUSSELL, MELISSA LIN JONES, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL, for the Compensation Review Board:

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant, an x-ray technician,¹ worked two jobs, one for Employer, and another for a different hospital, the Baltimore Washington Medical Center (BWMC). She sustained a work related injury to her left arm sometime in December 2011. The details of the injury are not recited in the Compensation Order, but Claimant treated for that injury with Dr. David Johnson, who imposed certain restrictions upon Claimant regarding lifting, pushing and pulling, duties which were part of her job with Employer but not with BWMC. Employer accommodated those restrictions by providing Claimant with assistance in connection with those duties, for two years.

¹ The Compensation Order refers to Claimant being "a radiologist", which implies that she is a medical doctor. However, the records and testimony clarify that Claimant is a medical professional who performs x-rays and related radiological tasks at the direction of physicians employed by her employers.

Claimant sustained the injury at issue in this case on April 3, 2013, when, during an argument with a doctor, she was pushed, striking her left arm and elbow on a table. She followed up with Dr. Johnson for this injury.

Dr. Johnson imposed restrictions upon overhead work, repetitive use of the left arm, and lifting no more than 10 pounds. Claimant again returned to modified work on June 27, 2013. However, as of that date, Dr. Johnson permanently restricted Claimant from performing her second job at BWMC.

Claimant suffered another work related injury on July 16, 2013, when something “snapped” in her right shoulder while lifting a patient. She was placed on temporary total disability and commenced a regimen including physical therapy, during which she aggravated her left shoulder injury.

When she was released to return to work, Employer declined to offer her a modified duty position. Employer continues to pay temporary total disability benefits based upon her salary with Employer.

On March 6, 2014, Dr. Johnson imposed permanent restrictions on unassisted lifting, and any pushing or pulling with the right arm.

Employer had Claimant evaluated in March 2014 by Dr. John D. O’Donnell for the purpose of an independent medical evaluation (IME). Dr. O’Donnell opined that a portion of Claimant’s left shoulder impairment was pre-existing, and a portion was caused by, and related to, the April 3, 2013 injury.

At a formal hearing conducted before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES) on August 20, 2014, Claimant sought an award of disability benefits based upon not being able to return to her employment at BWMC. On January 14, 2015 the ALJ issued a Compensation Order granting Claimant’s claim for temporary partial disability benefits.

Employer filed an Application for Review and Memorandum of Points and Authorities in Support thereof (Employer’s Brief), to which Claimant filed an Opposition and Memorandum of Points and Authorities in Support thereof (Claimant’s Brief).

Employer maintains that the ALJ erred in two ways, discussed below, rendering the Compensation Order unsupported by substantial evidence. Claimant argues that the ALJ’s factual findings are supported by substantial evidence and the Compensation Order should be affirmed.

Because the facts as found by the ALJ in the Compensation Order are supported by substantial evidence, and the conclusions reached therein flow rationally therefrom, we affirm the award.

ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. See D.C. Code § 32-1521.01 (d)(1)(A). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a different conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

Employer first argues that the ALJ “committed plain error by finding that the Claimant did not sustain a subsequent and intervening accident to the left shoulder on July 16, 2013 and the Compensation Order is not supported by substantial evidence”. Employer’s Brief, p. 5. Employer proceeds to argue that “there is little doubt the reports of Dr. Johnson indicate Claimant sustained an aggravation to the left shoulder in the July 16, 2013 incident” and the “Compensation Order is defective as it states that Claimant sustained an aggravation to the left shoulder during physical therapy but does not find that the Claimant had a subsequent and intervening accident.” Employer’s Brief, p. 6.

We disagree factually and analytically with Employer. Factually, nowhere does the Compensation Order contain a finding that Claimant never suffered any subsequent incidents that aggravated the work injury.² Analytically, even if the ALJ had made such a finding, it wouldn’t render the Compensation Order unsupported by substantial evidence. A subsequent intervening accident is only relevant insofar as it may sever the causal relationship between the work injury and the wage loss. The ALJ cites Employer’s own IME physician’s statement that Claimant’s current disability is related in part to the work injury, and that is sufficient evidence to support the ALJ’s conclusion with respect to causal relationship, even if an intervening incident contributes to the injury.

Employer also argues that the Compensation Order “must be reversed and remanded as the Claimant has not met her burden for temporary total disability and cannot be both partially and totally disabled”. Employer’s Brief, p.8. The underpinning of this argument is that Claimant’s restriction from working at the second job at BWMC was based solely upon Dr. Johnson’s concern that working the two jobs at once would cause her to exacerbate the work injury through overuse, and that since Claimant is not working at her pre-injury job and is receiving temporary total disability as a result of a the July 16, 2013 injury, she could now return to the BWMC job, since it won’t overwork her.

While this argument has some intuitive appeal, it is nonetheless merely speculative in nature. There is no opinion from Dr. Johnson that given Claimant’s present status she could return to the BWMC job. We will not substitute our judgment for that of the ALJ on this question.

² Employer inconsistently asserts that the ALJ made a finding that no subsequent intervening accident had occurred where it writes “The Compensation Order makes no finding as to whether Claimant sustained a subsequent and intervening accident”. Employer’s Brief, p. 7. This is a more accurate statement, but does not change the analysis.

Regarding the argument concerning Claimant being totally and partially disabled at the same time, what Employer is missing is that the “total” and “partial” distinction that it is trying to make is really a semantic argument that only arises because this case involves earnings from multiple jobs, not the receipt of concurrent workers’ compensation benefits. While the Compensation Order could be clearer in making this point, we find no error or multiple recoveries under these facts.

CONCLUSION AND ORDER

The findings of fact in the Compensation Order are supported by substantial evidence, and the conclusions reached by the ALJ flow rationally from them. Accordingly, the Compensation Order is affirmed.

FOR THE COMPENSATION REVIEW BOARD:



Jeffrey P. Russell
Administrative Appeals Judge

June 3, 2015

DATE